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## ON THE STUDY OF HISTORY AND JURISPRUDENCE.

[TRANSLATED FROM THE GERMAN OF F. W. J. VON SCHELLING, BEING THE TENTH LECTURE 'ON THE METHOD ON UNIVERSITY STUDY'—(*des akademischen Studiums*).]

BY ELLA S. MORGAN.

As the Absolute itself in the two forms of Nature and History appears as one and the same, so Theology, as the point of indifference of the real sciences, separates on the one side into History, and on the other into Natural Science, each of which contemplates its subjects apart from the other, as well as from the supreme unity.

This does not prevent each from presenting the central point in itself, and so returning into primal knowing.

The common conception of Nature and History is, that in the former everything takes place through empirical necessity ; in the latter, through Freedom. But these are themselves but forms or modes of being sundered from the absolute. History is in so far the higher potency of Nature as it expresses in the ideal what Nature expresses in the real world, but essentially it is the same in both, changed only by the determination or "Potenz" under which it exists. If the pure essence could be seen in both, we should recognize that which is reflected ideally in History as identical with that which is reflected really in Nature. Freedom, as Phenomenon, can create nothing ; it is a universal, which expresses the two forms of the reflected world each for itself, and in its own kind. Accordingly the complete world of history would be itself an ideal Nature, the State, as the external organism of a harmony of necessity and freedom attained in freedom itself. History, so far as it has the formation of this union as its chief object, would be history in the narrow sense of the word.

The question that now meets us, namely, whether history can be a science, seems to allow no doubt as to its answer. If history as such — and this is the point — is opposed to science as we have generally assumed in the preceding remarks,

then it is plain that it cannot itself be science ; and if the real sciences are syntheses of philosophical and historical material, for this reason history itself cannot be such a science any more than it can be philosophy. It would take the same rank, in this respect, as philosophy.

In order that this relation may be seen more clearly, let us consider the different stand-points from which history can be considered.

The highest which we have recognized is the religious stand-point, or that in which all history is conceived as the work of Providence. This cannot be used in history as such, because it is not essentially different from the philosophical stand-point. Of course, it is evident that I do not deny either the religious or the philosophical construction of history ; but the former is part of theology,—the latter belongs to philosophy, and is necessarily different from history as such.

The opposite stand-point to that of the absolute is the empirical ; which, again, has two sides : that of pure investigation as to what has happened, and acceptance of the same, which is the business of the naturalist who represents only one side of the historian as such ; and that of the union of empirical matter according to an identity of the understanding, or, since the latter cannot exist in the events in and for themselves, because these appear empirically, or rather accidentally and not in harmony ; or the arrangement according to an end planned out by the subject, which is in so far didactic or political. This treatment of history according to a definite and not a general view is called the pragmatic treatment, in accordance with the meaning of the word as determined by the ancients. So Polybius, who explains himself expressly in regard to this idea, is pragmatic on account of the particular aim of his histories, they being directed to the technicalities of war ; so Tacitus, because he traces step by step the fall of the Roman State to the effects of immorality and despotism.

The moderns are inclined to consider the pragmatic spirit to be the highest in history, and to deck themselves with its predicates as if it were the highest praise. But for the very reason of its dependence upon subjective caprice, no one of

sense will put the two historians just cited in the first rank. The German writers of history, with their pragmatistical spirit, are, as a rule, in the condition of "Famulus," in Goethe's *Faust*: "What they call The Spirit of the Times, is their own spirit, in which the times are reflected." In Greece, the noblest, ripest, most experienced minds seized the stilus of history, to write with it eternal characters. Herodotus is a true Homeric soul. In Thucydides the whole culture of the age of Perikles is concentrated in one divine spectacle.

In Germany, where science is more an affair of industry, it is the weakest minds which venture to undertake history. What a disgusting thing to see the picture of great events and characters sketched by a short-sighted, stupid man, especially when he makes a great effort to show off his understanding, and for this purpose, perhaps, explains the greatness of times and peoples by narrow theories, such as the importance of commerce, this or the other useful or dangerous discovery, and, in short, measures everything great and noble with the most common-place standards; or, perhaps, on the other hand he shows his pragmatism by reasoning on the events, or ornamenting his material with empty rhetorical flourishes,—as, for instance, "the continuous progress of man, and what splendid things we have at length achieved!"

Nevertheless, there is among sacred things nothing more sacred than history—this great mirror of the world-spirit, this eternal poem of the Divine Mind. There is nothing which should be kept more carefully from the touch of unclean hands.

The pragmatic aim of history, from its very nature, excludes universality, and necessarily demands a limited object. The purpose to instruct demands a correct and empirically justified connection of events, by means of which the understanding is perhaps enlightened, but the reason remains unsatisfied unless the view is made complete. Even Kant's plan of a history, in the world-citizen sense, purposes a mere construction of history according to canons of public utility, on the whole, and thus to explain what is only to be explained in the universal necessity of Nature. According to his plan, peace fol-

lows war ; finally, the everlasting peace results. From many complications there is to arise true constitutional liberty. But this “ plan ” of Nature is itself only the empirical reflection of true necessity, just as the purpose of a history ordered in accordance with it should be called, not a “ world citizen,” but a *citizen* “ plan,” inasmuch as the progress of mankind is towards peaceful inter-communication, to business and commercial enterprise, and these things are represented as if they were the most precious fruits of human life and its aspirations.

It is evident that the mere connection of events according to empirical necessity can never be anything but pragmatic. But history in its highest idea must be free, and independent of every subjective relation ; hence the empirical stand-point cannot be the highest of its presentations.

True history, moreover, rests on a synthesis of given facts and reality with the ideal ; but not by means of philosophy, since the latter rather abolishes reality and is wholly ideal, while history should be wholly actual, and at the same time ideal. This (perfect union of actual and ideal) is nowhere possible except in art, which allows the actual to exist, as the drama admits real events or histories, but presents them in a complete form and in a unity whereby they become the expression of the highest ideas. Since it is by means of art that history, while it is the science of the actual, as such, is at the same time lifted above the actual to the higher realm of the ideal, to the level of science ; accordingly the third and absolute stand-point of history is that of historical art.

We must now show the relation of this stand-point to what has already been said.

Of course the historian cannot, for the sake of his supposed art, change the matter of history, for the supreme law of history should be truth. Nor can the higher presentation of history neglect the actual connection of events. The case is rather the same as the justification of the actions in the drama, where each follows its predecessor, and finally everything follows of necessity from the first synthesis. The connection of one with the other, however, must not be empirical, but must be comprehensible from a higher order of things.

History does not become complete enough to satisfy Reason until the empiricist causes that satisfy the understanding are used as tools and means of the manifestation of a higher necessity. In such a presentation, history cannot lack the effect of the greatest and most wonderful drama, — a poem conceived by an Infinite Mind.

We have made history the equal of art. But the former presents an identity of necessity and freedom; and this phenomenon, especially in tragedy, is the proper object of our admiration. The same identity is also the stand-point of philosophy, and even of religion, for history recognizes in providence nothing but the wisdom which in the plan of the world unites the freedom of man with universal necessity, and *vice versa*. But, in reality, history rests neither on the philosophical nor the religious stand-point; accordingly it must present that identity of freedom and necessity, in the sense in which it appears, from the point of view of actuality, which it must never lose sight of. But from this point it is recognizable only as uncomprehended and wholly objective identity — as fate. It is not meant that the historian shall talk of fate, but that it should appear in the objectivity of his presentation, itself, and without his aid. In the historical books of Herodotus, destiny and compensation move as invisible but omniscient gods; in the higher and perfectly independent style of Thucydides, who shows dramatic power by the introduction of speeches, that higher unity is expressed in perfect form, and completely revealed.

Regarding the method of studying history, the following may suffice. On the whole, it must be considered as one considers an *epos*, without definite beginning, and without definite end. Taking the point which seems the most significant or the most interesting as the beginning, from this construct and expand the whole in every direction.

The so-called universal histories which teach nothing are to be avoided, but no others have yet appeared. The true universal history must be written in the epic style; hence in the spirit such as we see an example of in Herodotus. Those which are now called universal histories are only compendiums

wherein everything special and important is obliterated. Even he who does not choose history as his special field, should go as far as possible to original sources and particular accounts — these will give him most instruction. Let him learn to love in modern history the naïve simplicity of the chroniclers, who make no pretentious descriptions or psychological analysis of character.

He who wishes to educate himself as an artist of history, let him keep solely to the great models of the ancients, which could never be attained again after the decline of general and public life. If we except Gibbon, whose work has the broad conception, and the complete power to portray the great turning-point of history from ancient to modern, although he is only an orator, not a writer of history, there are none but national historians; and of these, modern times would only name Macchiavelli and Johann Müller.

What heights are to be climbed by one who wishes to delineate history worthily, those who consecrate themselves to this vocation can see from the letters which the latter wrote when a youth. Indeed, everything, all science and art, all that a public life rich in experience can furnish, all must unite to make the historian.

The original types of the historic style are the *epos* in its original form, and tragedy; for if universal history, whose beginnings, like the sources of the Nile, are undiscoverable, loves the epic form and richness, particular history, on the contrary, must be built up concentrically around a common point. It is not necessary to mention that, for the historian, the tragedy is the true source of great ideas and of noble thinking, toward which he must be educated.

We pronounced the formation of an objective organism of freedom or of the State to be the object of history in the narrow sense. There is a science in this, as necessarily as there is a science of Nature. Its idea cannot be derived from experience, for experience itself is created according to ideas, and the State should appear as work of Art.

If the real sciences in general are separated from philosophy only by the historic element, it is also true of jurisprudence;

but only so much of the historical element can belong to science as is the expression of ideas, and consequently nothing which is from its nature merely finite, as all forms of laws which relate only to the external mechanism of the State — where belongs almost the sum total of those laws which are now taught in jurisprudence, and in which is seen the spirit of a public state of affairs dwelling still in the ruins.

In regard to such laws there is no other advice to give but to learn and teach them empirically as it becomes necessary to use them in special cases before the courts or in public affairs, and not to desecrate philosophy by mixing it in things which have no part in it. The scientific construction of the State would, as regards its inner life, find no corresponding historic element in later times, except in so far as a contrary serves as a reflex of that of which it is the opposite. Private life, and with it private right also, have separated from public life; but the former abstracted from the latter have no more absoluteness than there is in particular bodies in Nature, or in their special relation to each other. Since in the entire withdrawal of universal and public spirit from private life, the latter is left behind as the mere finite side of the State, without any vitality, so in the conformity to law, which governs it, there is no application of ideas; the utmost possible is a mechanical ingenuity in bringing forward the empirical grounds of the law in special cases, or in deciding doubtful ones in accordance with it.

The only thing in this science which might be susceptible of a universal-historical view, is the form of public life and its particular determinations as far as they can be comprehended from the antithesis of the modern with the ancient world, and as far as they have a universal necessity.

The harmony of necessity and freedom, which necessarily expresses itself in externality and in an objective unity, differentiates itself in this phenomenon again in two directions, and has different forms according as it is expressed in the real or in the ideal. The complete realization in the first is the perfect State, whose idea is attained as soon as the particular and the general are absolutely one, when everything that is neces-



sary is at the same time free, and all that is free is also necessary. While external and public life disappeared in an objective harmony of both, it had to be replaced subjectively in an ideal unity, which is the Church. The State, in its antithesis with the Church, is the nature side of the totality in which both are one. In its absoluteness, the State would necessarily supplant its opposite (the Church) as an external existence, for the simple reason that it comprehends it; as the Greek State knew no Church, unless the Mysteries are so considered, which were, however, a branch of public life. The Mysteries are exoteric; the State, on the other hand, is esoteric, because in the State the particular dwells in the whole, in relation to which it is the element of difference, but the whole does not also dwell in the particular. In the real phenomenon of the State, unity existed in multiplicity, so that it was completely one with it; with the antithetic relation of the two, all other antitheses included therein make their appearance in the State. The unity necessarily became the dominant power, not in the absolute, but in the abstract form, that is monarchy, whose idea is essentially interwoven with that of the Church. On the other hand, multiplicity or the many must, by its opposition with unity, fall into mere singularity, and be no longer the instrument of the universality. Multiplicity in Nature, as the reflection of the infinite in the finite, and the elevation of the latter to the absolute, is in itself both unity and multiplicity, so in the perfect State, the many, for the very reason that it was organized into a separate world of servitude, was absolute within its limits, the separate and independent real side of the State, while for the same reason the free men moved in a pure ether of an ideal life resembling the life of ideas. The modern world is in all respects the world of participation (intermingling), as the ancient was the world of pure abstraction and limitation. The so-called civil freedom has only the most dismal intermixture of slavery and freedom, but has produced no absolute, and hence free, existence of either the one or the other. The antithesis of unity and multiplicity in the State made mediators necessary, who, however, in the mediation between governing and governed, formed no absolute world,

and existed only as antithesis, but never attained an independent reality peculiarly and essentially their own.

The first effort of one who desires to comprehend the positive science of Law and the State must be this : by means of philosophy and history to create a living conception of the modern world and the necessary forms of its public life ; it can scarcely be imagined what a source of culture could be opened in this science if pursued with an independent spirit, free from regard for utility, and for its own sake.

The essential presupposition for it is the pure construction of the State derived through ideas, a problem of which Plato's Republic has been the only solution. Although we recognize in it the contrast of the modern and antique spirit, this divine work will still remain the archetype and model. Whatever is possible to be said of the true synthesis of the State in the present connection has at least been indicated, and cannot be explained further without the reference to a visible document. I therefore limited myself to pointing out what has heretofore been arrived at and accomplished in the treatment of the so-called Natural rights.

The spirit of formalism and analysis has prevailed more obstinately than elsewhere in this department of philosophy. The first ideas were either taken from Roman law or from some accessible form, so that the law of Nature has gradually passed, not only through all possible instincts of human Nature, but through all conceivable formulas. By an analysis of the same, a series of formal propositions has been discovered, by help of which it is expected to attain to positive jurisprudence.

Especially have Kantian jurists begun diligently to use their philosophy as the handmaid of their science, and so properly enough always reformed the system of natural rights. This mode of philosophizing shows itself in catching after ideas, no matter of what kind they are, if only they be single and individual, in order that he who has caught them may appear to have a system of his own, because of the trouble he takes to distort everything else into harmony with them ; but it is a system which is soon replaced by others of the same kind.

The first endeavor to construct the State as real organization.

was Fichte's Law of Nature. If the merely negative side of the form of government which aims only at security of law could be isolated and separated from all positive institutions for the energy, the rhythmic motion, and beauty of public life, it would be difficult to reach any other result, or to discover any other form of State than is presented in that one. But the emphasis of the merely finite side extends the organism of the form of government into an endless mechanism, where nothing unconditioned is found. And, indeed, all attempts heretofore made may be accused of subordinating their efforts to an endeavor to make a State in order that certain ends might be attained. Whether this end is universal happiness, the satisfaction of the social instincts of human nature, or in something purely formal, as the common life of free beings under the conditions of utmost freedom, is alike indifferent in this connection ; for in every case the State is considered as a means, as conditioned and dependent. All true construction is from its nature absolute, and always directed towards oneness, even in its particular form. For example, it is not construction of the State as such, but of the absolute organism in the form of the State. Hence, to construct it is not to conceive it as the condition of the possibility of something external to it. For the rest, if the State is the immediate and visible image of absolute life, it will of itself fulfil all other ends, just as Nature does not exist in order that there may be equilibrium of matter, but this equilibrium exists because Nature is.